

(d) *Self-Incrimination; immunity*—(1) *Self-Incrimination*. Except as provided in paragraph (d)(2) of this section, a witness testifying or otherwise giving information in an investigation may refuse to answer questions on the basis of the right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(2) *Immunity*.² If the Commission believes that the testimony or other information sought to be obtained from any individual may be necessary to the public interest and that individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the Commission, with the approval of the Attorney General, may issue an order requiring the individual to give testimony or provide other information which he previously refused to give on the basis of self-incrimination. Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in an investigation under this part, and the person presiding over the investigation communicates to the witness an order issued by the Commission requiring the witness to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

[41 FR 29799, July 19, 1976, as amended at 61 FR 1709, Jan. 23, 1996]

§ 11.8 Sequestration.

(a) *Sequestration of witnesses*. All witnesses and potential witnesses shall be

² This subsection shall be effective on and after such date as section 6001 of Title 18 of the United States Code has been amended to include the Commodity Futures Trading Commission among those agencies which may, with the approval of the Attorney General, grant immunity to witnesses to the extent and in the manner prescribed in 18 U.S.C. 6001 *et seq.*

sequestered and prohibited from being present during the examination of any other witness unless otherwise permitted in the discretion of the person conducting the investigation.

(b) *Sequestration of counsel*. When a reasonable basis exists to believe that an investigation may be obstructed or impeded, directly or indirectly, by an attorney's representation of more than one witness during the course of an investigation, the member of the Commission or of the Commission's staff conducting the investigation may prohibit that attorney from being present during the testimony of any witness other than the witness in whose behalf counsel first appeared in the investigatory proceeding. To the extent practicable, consistent with the integrity of the investigation, the attorney will be advised of the reasons for his having been sequestered.

APPENDIX A TO PART 11—INFORMAL PROCEDURE RELATING TO THE RECOMMENDATION OF ENFORCEMENT PROCEEDINGS

The Division of Enforcement ("Division"), in its discretion, may inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them. The Division, in its discretion, may advise such persons that they may submit a written statement prior to the consideration by the Commission of any staff recommendation for the commencement of such proceeding. Unless otherwise provided for by either the Director, a Deputy Director, the Program Coordinator, the Chief Counsel, an Associate Director, or a Regional Counsel of the Division, or a Regional Director of the Commission, such written statements shall be submitted within 14 days after persons are informed by the Division of Enforcement of the nature of the proposed allegations pertaining to them and shall be no more than 20 pages, double spaced on 8½ by 11 inch paper, setting forth their views of factual, legal or policy matters relevant to the commencement of an enforcement proceeding. Any statement of fact included in the submission must be sworn to by a person with personal knowledge of such fact. Statements shall be forwarded to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, with copies to the staff conducting the investigation, shall clearly identify the specific investigation, and, if desired, may request that the statement be forwarded to the Commission. Similarly, persons who become

Commodity Futures Trading Commission

Pt. 12

involved in an investigation, and submit a written statement on their initiative, should follow the relevant procedures described herein. In the event the Division recommends the commencement of an enforcement proceeding to the Commission, any written statement will be forwarded to the Commission if so requested. The Commission may, in its discretion, consider all, any portion or none of the submission when it considers the staff recommendation to commence an enforcement proceeding.

[52 FR 19501, May 26, 1987, as amended at 60 FR 49334, Sept. 25, 1995; 61 FR 1709, Jan. 23, 1996]

PART 12—RULES RELATING TO REPARATIONS

Subpart A—General Information and Preliminary Consideration of Pleadings

- Sec.
- 12.1 Scope and applicability of rules of practice relating to reparations.
 - 12.2 Definitions.
 - 12.3 Business address; hours.
 - 12.4 Suspension, amendment, revocation and waiver of rules.
 - 12.5 Computation of time.
 - 12.6 Extensions of time; adjournments; postponements.
 - 12.7 Ex parte communications in reparation proceedings.
 - 12.8 Separation of functions.
 - 12.9 Practice before the Commission.
 - 12.10 Service.
 - 12.11 Formalities of filing of documents with the Proceedings Clerk.
 - 12.12 Signature.
 - 12.13 Complaint; election of procedure.
 - 12.14 Withdrawal of complaint.
 - 12.15 Notification of complaint.
 - 12.16 Response to complaint.
 - 12.17 Satisfaction of complaint.
 - 12.18 Answer; election of procedure.
 - 12.19 Counterclaim.
 - 12.20 Response to counterclaim; reply; election of procedure.
 - 12.21 Voluntary dismissal.
 - 12.22 Default proceedings.
 - 12.23 Setting aside of default.
 - 12.24 Parallel proceedings.
 - 12.25 Filing fees.
 - 12.26 Commencement of a reparation proceeding.
 - 12.27 Termination of consideration of pleadings.

Subpart B—Discovery

- 12.30 Methods of discovery.
- 12.31 Production of documents and tangible items.
- 12.32 Depositions on written interrogatories.

- 12.33 Admissions.
- 12.34 Discovery by a decisionmaking official.
- 12.35 Consequences of a party's failure to comply with a discovery order.
- 12.36 Subpoenas to compel discovery.

Subpart C—Rules Applicable to Voluntary Decisional Proceedings

- 12.100 Scope and applicability of rules.
- 12.101 Functions and responsibilities of the Judgment Officer.
- 12.102 Disqualification of Judgment Officer.
- 12.103 Filing of documents; subscription; service.
- 12.104 Amendments to pleadings; motions.
- 12.105 Submission of proof only in documentary or tangible form.
- 12.106 Final decision and order.

Subpart D—Rules Applicable to Summary Decisional Proceedings

- 12.200 Scope and applicability of rules.
- 12.201 Functions and responsibilities of the Judgment Officer.
- 12.202 Disqualification of Judgment Officer.
- 12.203 Filing of documents; subscription; service.
- 12.204 Amended and supplemental pleadings.
- 12.205 Motions.
- 12.206 Pre-decision conferences.
- 12.207 Summary disposition.
- 12.208 Submissions of proof.
- 12.209 Oral testimony.
- 12.210 Initial decision.

Subpart E—Rules Applicable to Formal Decisional Proceedings

- 12.300 Scope and applicability of rules.
- 12.301–12.302 [Reserved]
- 12.303 Pre-decision conferences.
- 12.304 Functions and responsibilities of the Administrative Law Judge.
- 12.305 Disqualification of Administrative Law Judge.
- 12.306 Filing of documents; subscription; service.
- 12.307 Amended and supplemental pleadings.
- 12.308 Motions.
- 12.309 Interlocutory review by the Commission.
- 12.310 Summary disposition.
- 12.311 Disposition of proceeding or issues without oral hearing.
- 12.312 Oral hearing.
- 12.313 Subpoenas for attendance at an oral hearing.
- 12.314 Initial decision.
- 12.315 Consequences of overstating damages claims not in excess of \$30,000.

Subpart F—Commission Review of Decisions

- 12.400 Scope and applicability of rules.